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PLANTRONICS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PLANTRONICS, INC., a Delaware
corporation,

Plaintiff,

v.

AMERICAN HOME ASSURANCE
COMPANY, a New York corporation; THE
INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA, a Pennsylvania
corporation; ATLANTIC MUTUAL
INSURANCE COMPANY, a New York
corporation,

Defendants.

CASE NO. C07-06038 PVT

**MOTION FOR AN ORDER SHORTENING
TIME ON MOTION TO STAY
PROCEEDINGS**

Date: n/a
Time: n/a
Trial Date: None Set

(Honorable Patricia V. Trumbull)

Pursuant to Civil Local Rule 6-3, plaintiff, Plantronics, Inc. ("Plantronics"), respectfully requests an order shortening time for the consideration of its Motion to Stay Proceedings ("Motion to Stay"), filed concurrently. This motion is based on the arguments herein and the Declaration of Paul T. Llewellyn, the Motion to Stay and the Declaration of Paul T. Llewellyn filed in support thereof, and all pleadings and records in this case. Before filing this motion, counsel for Plantronics met and conferred with counsel for defendants in order to determine if they intend to oppose this motion. Two of the three defendants, American Home Assurance Company ("American Home") and ICSOP ("Insurance Company of the State of Pennsylvania")

1 have no objection to an order shortening time on the Motion to Stay. Declaration of Paul T.
 2 Llewellyn In Support of Motion for an Order Shortening Time on Motion to Stay ("Llewellyn
 3 Decl."), ¶ 2.

4 As set forth in Plantronics' Motion to Stay, filed concurrently, this declaratory relief
 5 action arose out of the denial of insurance coverage by defendants for seven putative class
 6 actions that have been filed against Plantronics ("underlying actions"). The underlying actions
 7 concern the use of "Bluetooth Headsets" marketed, manufactured and distributed by Plantronics.
 8 The underlying actions have been consolidated by the Judicial Panel on Multidistrict Litigation,
 9 and the consolidated proceedings are currently pending before the Honorable Dale S. Fischer in
 10 the Central District of California.

11 In this action, Plantronics seeks to establish that the insurance policies require defendants
 12 to defend and indemnify Plantronics in the underlying actions. In circumstances such as those
 13 presented here, where there are questions of insurance coverage related to underlying litigation,
 14 the insured is not required to wage a "two-front" war at the same time. *See, e.g., David Kleis,*
 15 *Inc. v. Superior Court*, 37 Cal. App. 4th 1035 (1995); *California Insurance Guarantee*
 16 *Association v. Superior Court*, 231 Cal. App. 3d 1617 (1991). Additionally, a stay of this action
 17 makes sense, because Plantronics' damages are accruing on an on-going basis in the underlying
 18 actions.

19 Pursuant to Civil Local Rule 7-2, a motion can be heard no less than 35 days after filing
 20 and service of the motion. Here, the earliest available hearing date for the Motion to Stay under
 21 regular notice procedures is March 11, 2008. However, if the Motion to Stay is not heard until
 22 that date, the key purpose of the stay in preventing Plantronics from having to fight a "two-front
 23 war" at the same time will be substantially defeated because of deadlines arising before that date.
 24 For example, pursuant to the Court's order setting an initial case management conference, the
 25 parties are due to meet and confer by February 26, 2008, regarding initial disclosures, early
 26 settlement, ADR process selection, and a discovery plan; and the parties are currently due to file
 27 their Rule 26(f) Reports by March 11, 2008. Llewellyn Decl., Ex. A. Additionally, by
 28 stipulation of the parties, defendants' responsive pleadings to the Complaint are due to be filed

1 by February 4, 2008. Llewellyn Decl., Exs. B and C. Defendant Atlantic Mutual Insurance
2 Company ("Atlantic Mutual") has indicated that it may file a motion to dismiss in response to the
3 Complaint. Llewellyn Decl., ¶ 2. Plantronics could therefore be placed in a situation where it is
4 having to oppose a motion to dismiss, at the same time as its Motion to Stay is pending. Once
5 again, the purpose of the stay, in preventing a party from having to fight a "two-front war" at the
6 same time would be substantially defeated.

7 To preserve the Motion to Stay's goals, the motion should be heard as soon as possible.
8 Accordingly, Plantronics respectfully requests that the Motion to Stay be calendared for hearing
9 on February 19, 2008, that the deadline for any opposition to the Motion to Stay be February 8,
10 2008, and the deadline for Plantronics' reply be February 13, 2008.

11 Dated: January 31, 2008

Respectfully submitted,

12 LATHAM & WATKINS LLP
13 Stephen Stublarec
14 Paul T. Llewellyn

15 By: _____/s/
16 Paul T. Llewellyn
17 Attorneys for Plaintiff
18 Plantronics, Inc.
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